

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:)
)
EASTERN LIVESTOCK CO., LLC,) Case No. 10-93904-BHL-11
)
Debtor.) Hon. Basil H. Lorch III

**TRUSTEE'S MOTION TO APPROVE COMPROMISE AND SETTLEMENT
WITH EICKE RANCH II**

Pursuant to Federal Rule of Bankruptcy Procedure 9019, James A. Knauer, as chapter 11 trustee ("Trustee") for the bankruptcy estate (the "Estate") of Eastern Livestock Co., LLC ("Debtor"), by counsel, respectfully moves the Court to approve a compromise and settlement of claims between the Trustee and Eicke Ranch II ("Eicke"). In support of this Settlement Motion, the Trustee states as follows:

Introduction and Background

1. Certain petitioning creditors commenced the above-captioned chapter 11 case ("Chapter 11 Case") on December 6, 2010 (the "Petition Date"). The Court entered the *Order For Relief in An Involuntary Case and Order to Complete Filing* [Docket No. 110] on December 28, 2010.

2. On December 27, 2010, the Court entered the *Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee* [Docket No. 102] approving the *United States Trustee's Application for an Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee* [Docket No. 98] pursuant to 11 U.S.C. § 1104.

3. The Trustee filed the *Trustee's Chapter 11 Plan of Liquidation* on July 23, 2012 [Docket No. 1255] and the *First Amended Chapter 11 Plan of Liquidation* on October 26, 2012 [Docket No. 1490] ("Plan"). The Court entered an Order on December 17, 2012 [Docket

No. 1644] ("Confirmation Order") confirming the Plan. Pursuant to the Plan and the Confirmation Order, general unsecured creditors of Debtor's estate could choose to "opt in" and receive a distribution from the "Fifth Third Claim Settlement Fund" (as that term is defined in the Plan). As provided in the Plan, a creditor's election to "opt-in" affects the creditor's rights to and amount of distributions under the Plan. The Plan required any creditor who opts in to waive certain claims against non-Debtor entities. Other effects of an election to opt in are more particularly described in the Plan and in the Confirmation Order.

4. The Trustee contends that prior to the Chapter 11 Case, Debtor purchased 64 head of cattle (the "Eicke Cattle") from or through Eicke pursuant to contract. The Eicke Cattle were delivered to Friona Industries, L.P. ("Friona") on or around November 3, 2010.

5. Friona interpled \$54,147.49, representing the proceeds of the Eicke Cattle ("Interpled Funds"), with the Court in connection with Adversary Proceeding No. 11-59093 (the "Adversary").

6. Eicke filed Defendant Eddie Eicke's First Amended Answer to Friona Industries, L.P.'s First Amended Complaint in the Nature of Interpleader; and Counterclaims and Cross-Claims (the "Eicke Answer") as Docket No. 203 in the Adversary, asserting claims to the Interpled Funds. The Trustee contends that the Interpled Funds are property of Debtor's bankruptcy estate.

7. On May 1, 2011, Eicke filed a proof of claim (the "Eicke POC") in the Chapter 11 Case. The Eicke POC is designated on the official claims register maintained by The BMC Group, Inc. as claim no. 433. The Eicke POC asserts a total claim against Debtor in the amount of \$54,147.49.

8. Eicke executed and submitted an "Opt-In Agreement" by the deadline set forth in the Plan and Confirmation Order.

The Settlement

9. The Trustee has negotiated a settlement of Eicke's claims on the terms set forth in the Settlement Agreement and Mutual Release attached hereto as Exhibit A ("Settlement Agreement"). Pursuant to the Settlement Agreement, the Trustee and Eicke have agreed to divide the Interpled Funds, with Eicke receiving \$5,414.75 of the Interpled Funds (the "Settlement Payment") and the Trustee receiving the remaining \$48,732.74 of the Interpled Funds. As of Eicke's receipt of the Settlement Payment, the Eicke POC shall be deemed to have been amended, without further action by either the Trustee or Eicke, to assert an unsecured claim in the total amount of \$48,732.74 (the "Eicke Allowed Claim"). Eicke shall hold an "Opt-In Claim" in the amount of the Eicke Allowed Claim. The parties shall release and waive all other claims against one another related to the Eicke Cattle.

10. In accordance with the terms of the Plan, the \$48,732.74 of Interpled Funds received by the Trustee shall become part of the Collateral Fund (as that term is defined in the Plan).

Basis for Relief

11. Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), this Court has authority to approve a compromise or settlement on motion made by the Trustee after notice and opportunity for a hearing.

12. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. See In re Doctors Hosp. of Hyde Park, Inc., 474 F.3d 421, 426 (7th Cir. 2007); Depoister v. Mary M.

Holloway Found, 36 F.3d 582, 586 (7th Cir. 1994); Matter of Energy Co-op, Inc. 886 F.2d 921, 927 (7th Cir. 1989).

13. The Trustee believes that the compromise and settlement reflected in the proposed Settlement Agreement is fair and equitable and in the best interests of the estate. The Settlement Payment is less than the Trustee would be required to spend to obtain a judgment as to the relative rights in and to the Interpled Funds. Accordingly, continued litigation with Eicke would result in significant expenses and delay and a smaller recovery to the estate.

14. If no objections to this Settlement Motion are filed, the Trustee requests that the Court enter an order approving the Settlement Agreement. If any objections to this Settlement Motion are filed, the Trustee requests that this Settlement Motion and any timely filed objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court.

WHEREFORE, the Trustee respectfully requests that the Court enter an order approving the Settlement Agreement attached hereto as Exhibit B and grant the Trustee all other just and proper relief.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

By: /s/ Dustin R. DeNeal

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CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2013, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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